



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF L-M-C-G-

DATE: MAY 25, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a high school science teacher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. §1153(b)(2). In addition, the Petitioner seeks a national interest waiver of the job offer requirement that is normally attached to this classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. §1153(b)(2)(B)(i). This discretionary waiver allows U.S. Citizenship and Immigration Services (USCIS) to provide an exemption from the requirement of a job offer, and thus a labor certification, when it serves the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner established her eligibility as an advanced degree professional, but did not establish that a waiver of the job offer requirement is in the national interest.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief in which she argues that the previously submitted evidence demonstrates her eligibility for a national interest waiver.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. —

(A) In general. — Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.<sup>[1]</sup>

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

*Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must demonstrate that the national interest would be adversely affected if a labor certification were required by establishing that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

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<sup>1</sup> Pursuant to section 1517 of the Homeland Security Act of 2002 (“HSA”), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA “shall be deemed to refer to the Secretary” of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

## II. ANALYSIS

The Director determined that the Petitioner qualifies as an advanced degree professional and that her proposed work as a high school science teacher has substantial intrinsic merit. The two findings at issue in this matter are (1) whether the Petitioner established that the benefits of such work are national in scope as required under the second prong of the *NYSDOT* national interest analysis, and (2) whether she demonstrated sufficient influence on her field to meet the third prong.

At the time of filing the Form I-140, Immigrant Petition for Alien Worker, the Petitioner was employed as a science teacher and science department chair at [REDACTED]. The record indicates that she had worked for [REDACTED] in [REDACTED] Kentucky, since 2008, after having previously taught in the Philippines since 1985.

In support of the Form I-140, the Petitioner provided evidence of her credentials and experience as an educator. She submitted copies of her academic diplomas and transcripts, documentation showing her certification in Kentucky to teach high school biological science, high school physics, and middle grade science, copies of certificates for trainings that she completed, and evidence of her membership in professional associations. She provided letters and employment contracts documenting her work experience in the United States and in the Philippines, and verification of her salary in the United States.

As evidence of her accomplishments as a teacher, the Petitioner submitted copies of certificates of recognition and appreciation and letters of thanks for her teaching, her support of student groups, and her participation as a coach and mentor during science competitions and other events. The Petitioner indicated that her work has received media coverage including an article about her as a featured educator in the [REDACTED] an article in a Philippine newspaper about her participation as a mentor in the [REDACTED] and articles about her work in high school publications.<sup>2</sup> In addition, she provided numerous letters from current and former colleagues, supervisors, students, and parents attesting to the Petitioner's noteworthy dedication and effectiveness as a science teacher and a mentor to her students.

In a request for evidence (RFE), the Director requested additional documentation to establish that the benefits of the Petitioner's proposed work are national in scope. In addition, the Director sought additional evidence under the third prong of the *NYSDOT* analysis, including documentation showing that the Petitioner has a past record of specific prior achievement with some degree of influence on the field as a whole.

In response to the request regarding the national scope of her proposed work, the Petitioner argued that she will be meeting a national need for qualified teachers of science, especially for physics instructors. She submitted evidence regarding the demand for physics teachers in the United States,

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<sup>2</sup> The Petitioner provided photocopies of several articles, but the images did not include sufficient identifying information to confirm the sources of the articles or details regarding their publication.

including an article from the Physics Teacher Education Coalition discussing a “severe, long-term shortage of qualified physics teachers.” As an additional rationale regarding the national-level benefits of her proposed work, the Petitioner noted that President Obama has recognized education’s importance to the national economy.

With regard to her record of achievement, the Petitioner submitted a recent certificate recognizing her as a member of the [REDACTED] 2014 [REDACTED] and inviting her to nominate students to attend the 2014 [REDACTED] and to select a student to receive an academic scholarship. The certificate expressed “great appreciation for assisting outstanding students stay true to their dreams and helping solve one of America’s great challenges: the growing shortage of medical professionals and of young people entering the [science, technology, engineering, and math] fields.” She provided further documentation regarding her credentials and training, as well as letters of recommendation. As additional evidence of her effectiveness as a teacher and mentor at [REDACTED] the petitioner submitted copies of favorable performance evaluations and evidence that she had been ranked as the most influential student mentor at [REDACTED] during multiple school years. In addition, she provided evidence regarding her role as initiator and coordinator for an international humanitarian project at her school to send school supplies to an area of the Philippines damaged by a typhoon.

In denying the Form I-140, the Director found that the Petitioner had not shown that the benefits of her proposed work would be national in scope as required under the second prong of the *NYSDOT* analysis, and that she had not demonstrated sufficient influence on her field to meet the third prong. Addressing the Petitioner’s argument of a shortage of qualified physics teachers, the Director cited language from *NYSDOT* stating that a national interest waiver “is not warranted solely for the purpose of ameliorating a local labor shortage, because the labor certification process is already in place to address such shortages.” *Id.* at 218.

In her brief on appeal, the Petitioner states that the proposed benefits of her work are national in scope due to the nationwide shortage of physics teachers. She contends that “*NYSDOT* emphasizes that local labor shortages of qualified U.S. workers can be addressed through the labor certification process,” but that the “same reasoning does not apply to national labor shortages because the labor certification process tests the local labor market not the national labor market.” (Emphasis in original). Regarding the third prong of *NYSDOT*, the Petitioner argues that the national interest would be adversely affected if a labor certification were required because there is “no administrative labor certification process in place to test nationwide markets.” In addition, she maintains that her accomplishments are consistent with the level of past achievement required under *NYSDOT*.

#### A. National Scope

We find the Petitioner has not shown that the benefits of her proposed work are national in scope. The Petitioner has asserted that her proposed work will impart national-level benefits by helping to fill a nationwide shortage of qualified physics teachers. While we will address the petitioner’s

shortage argument in detail below, for the purpose of this prong we note that the Petitioner has not demonstrated that her proposed work as an individual teacher would have a nationally significant effect on such a shortage. Likewise, while the Petitioner's RFE response discussed the importance of education to national economic success, the record does not indicate that the impact of her own proposed work as a science teacher would offer national benefits. This finding is consistent with *NYSDOT*, which cited a classroom teacher as an example of a meritorious occupation that would lack the requisite national scope to establish eligibility. *Id.* at 217, n.3.

#### B. Influence on the Field

The Petitioner has not demonstrated sufficient influence on her field to satisfy the third prong of the *NYSDOT* analysis. While *NYSDOT* states that a petitioner must demonstrate that the national interest would be adversely affected if a labor certification were required, it goes on to explain that a petitioner makes such a demonstration by establishing that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18. It further clarifies that, to do this, a petitioner must establish "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Id.* at 219, n. 6.

In this instance, the Petitioner has submitted documentation of her work at the local level, including evidence demonstrating the positive impact she has had on her own students and school district. The evidence does not establish, however, that she has had an influence on the field of science or physics education generally. While particularly significant awards may serve as evidence of impact on a field, the Petitioner did not demonstrate that any of the certificates she submitted are indicative of such influence. For these reasons, we find the record insufficient to establish that the petitioner has had some degree of influence on the field as a whole.

As stated previously, the Petitioner argues that requiring a labor certification in this case would adversely affect the national interest because the labor certification process does not test for national labor shortages. The labor certification process requires an employer to demonstrate that there are no qualified U.S. workers available for a given position before it hires a foreign national. While the Petitioner is correct that the process only involves a local test of the labor market, it is not clear why the nation-wide scale of a shortage would prevent an employer from successfully obtaining a labor certification on the Petitioner's behalf.<sup>3</sup> Regardless, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

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<sup>3</sup> We note the petitioner in *NYSDOT* submitted statements regarding a national labor shortage in his field, and such arguments were found insufficient to demonstrate eligibility for a waiver. *Id.* at 219-220, 222. *NYSDOT* indicated that contentions regarding a shortage of qualified workers would weigh in favor of obtaining, rather than waiving, a labor certification.

### III. CONCLUSION

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner in this case has not established by a preponderance of the evidence that the benefits of her proposed work are national in scope or that she has a past record of demonstrable achievement with some degree of influence on the field as a whole. Therefore, she has not demonstrated that a waiver of the job offer requirement will be in the national interest of the United States. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of L-M-C-G-*, ID# 16499 (AAO May 25, 2016)